

AILA Backgrounder

Immigration-Related Recommendations from the 9/11 Commission's Final Report

The National Commission on Terrorist Attacks upon the United States (“9/11 Commission”) released its final report on July 22, 2004. The report provides an account of the circumstances surrounding the September 11, 2001 terrorist attacks, including preparedness for and the immediate response to the attacks. It also includes recommendations designed to guard against future attacks. The report contains various observations and recommendations related to immigration controls and inter-agency information sharing, a brief summary of which follows.

Immigration-related failures or problems that likely contributed to the attacks

The Commission’s report cites to various immigration-related “missed opportunities” whereby intelligence and law enforcement could have hampered the 9/11 hijackers’ ability to enter or remain in the United States. As examples of these missed opportunities, the report notes (Executive Summary at p. 8) that, collectively, the 9/11 hijackers:

- included known al Qaeda operatives who could have been watchlisted;
- presented fraudulent passports;
- presented passports with suspicious indicators of extremism;
- made detectable false statements on visa applications;
- made false statements to border officials to gain entry into the United States; and
- violated immigration laws while in the United States.

The report contends that because border security was not considered to be a national security matter prior to 9/11, neither the State Department’s consular officers nor the Immigration and Naturalization Service’s inspectors or agents were considered to be “full partners” in national counterterrorism efforts. (Executive Summary at p. 14). To correct this weakness and integrate immigration authorities into a wider information-sharing network, as well as make it more difficult for terrorists to enter the United States, the Commission recommends the following:

Recommendations for improvement of immigration controls

- **Address problems of screening people with biometric identifiers across agencies and governments, including our border and transportation systems, by designing a comprehensive screening system that addresses common problems and sets common standards.** “As standards spread,” the Commission states, “this necessary and ambitious effort could dramatically strengthen the world’s ability to intercept individuals who could pose catastrophic threats....For terrorists, travel documents are as important as weapons.” (Full Report at pp. 384, 387). “The current patchwork of border screening systems, including several frequent traveler programs, should be consolidated with the US VISIT system to enable the development of an integrated system, which in turn can become part of the wider screening plan we suggest.” (Full Report at p. 388).

- **Quickly complete a biometric entry-exit screening system, one that also speeds qualified travelers.** The Commission finds that Americans should not be exempt from carrying biometric passports or otherwise enabling their identities to be securely verified when they enter the United States; nor should Canadians or Mexicans. “The current system enables non-U.S. citizens to gain entry by showing minimal identification,” the report states. “The 9/11 experience shows that terrorists study and exploit America’s vulnerabilities.” To balance this measure, the Commission urges that programs to speed known travelers be given a higher priority, thus permitting inspectors to focus on those who pose greater risks. “The daily commuter should not be subject to the same measures as first-time travelers,” the report notes. An individual should be able to preenroll, with his or her identity verified in passage. Updates of database information and other checks can ensure ongoing reliability. The Commission believes that the solution, which still will require more research and development, is likely to combine radio frequency technology with biometric identifiers. (Full Report at p. 388).
- **Integrate the U.S. border security system into a larger network of screening points that includes the transportation system.** Such a screening system should “look for identifiable suspects or indicators of risk” and would require “frontline border officials who have the tools and resources to establish that people are who they say they are.” (Full Report at p. 387).
- **Set standards for the issuance of birth certificates and sources of identification, such as driver’s licenses.** (Full Report at p. 390).
- **Target terrorist travel.** The Commission recommends that travel intelligence, operations and law enforcement be combined in a strategy to intercept terrorists, find their travel facilitators, and constrain their mobility. “The challenge for national security in an age of terrorism is to prevent the very few people who may pose overwhelming risks from entering or remaining in the United States undetected,” states the report. (Full Report at p. 383).

Within the section of the report laying out the Commission’s immigration-related recommendations, the Commission had this to say on the topic of “Immigration Law and Enforcement”:

Our borders and immigration system, including law enforcement, ought to send a message of welcome, tolerance, and justice to members of immigrant communities in the United States and in their countries of origin. We should reach out to immigrant communities. Good immigration services are one way of doing so that is valuable in every way—including intelligence.

It is elemental to border security to know who is coming into the country. Today more than 9 million people are in the United States outside the legal immigration system. We must also be able to monitor and respond to entrances between our ports of entry, working with Canada and Mexico as much as possible.

There is a growing role for state and local law enforcement agencies. They need more training and work with federal agencies so that they can cooperate more effectively with those federal authorities in identifying terrorist suspects.

All but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud. Acquisition of these forms of identification would have assisted them in boarding commercial flights, renting cars, and other necessary activities. (Full Report at p. 390).

Broader failures of inter-agency cooperation and information-sharing and recommendations for improvement

The Commission also cites a lack of coordination and information-sharing among the U.S. intelligence community, finding, among other things, that the U.S. intelligence structure currently is not organized in a manner to allow for a unity of effort across the government. “The U.S. government did not find a way of pooling intelligence and using it to guide the planning and assignment of responsibilities for joint operations involving entities as disparate as the CIA, the FBI, the State Department, the military, and the agencies involved in homeland security,” the report’s Executive Summary states. To that end, the Commission recommends standardized practices in reporting and training as well as a reorganization of the intelligence community which, the Commission believes, will make inter-organizational and international information sharing possible. Specifically, the Commission recommends:

- **Developing a National Counterterrorism Center (NCTC) that would direct and facilitate the joint intelligence function and operations work.** The Commission believes that the NCTC should not be a policy-making body, but that its operations and planning should follow the policy direction of the President and the National Security Council. (Full Report at pp. 403-04).
- **Establishing a new National Intelligence Director who would take on parts of the CIA Director’s responsibilities and would oversee national intelligence centers and agencies that contribute to the national intelligence program.** (Full Report at p. 411).
- **Replacing the system of “need to know” with a system of “need to share.”** “The President should lead a government-wide effort to bring the major national security institutions into the information revolution,” the report recommends. (Executive Summary at pp. 24-25).

Importantly, the report stresses the need for protecting civil liberties while simultaneously enhancing our national security, and recommends that guidelines be established for gathering and sharing information in the new security systems which integrate safeguards for privacy and other essential liberties. “[W]hile protecting our homeland, Americans should be mindful of threats to vital personal and civil liberties,” the report states. “This balancing is no easy task, but we must constantly strive to keep it right.” (Full Report at p. 394).

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